

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 19-0446V

A.F.,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Filed: November 4, 2022

Edward Kraus, Kraus Law Group, LLC, Chicago, IL, Petitioner

Mitchell Jones, U.S. Dep't of Justice, Washington, DC, Respondent.

ORDER GRANTING MOTION TO REDACT¹

On March 26, 2019, A.F. filed a petition seeking compensation under the National Vaccine Injury Compensation Program (the "Vaccine Program").² ECF No. 1. Petitioner alleged that she developed Postural Orthostatic Tachycardia Syndrome after receiving the human papillomavirus vaccine on December 30, 2017. *Id.* Having reviewed the record and all associated filings, I denied an entitlement award on October 11, 2022. Decision, dated Oct. 11, 2022 (ECF No. 49).

¹ Although this Order has been formally designated "not to be published," it will nevertheless be posted on the Court of Federal Claims' website in accordance with the E-Government Act of 2002, 44 U.S.C. § 3501 (2012). **This means the Order will be available to anyone with access to the internet.** As provided by 42 U.S.C. § 300aa-12(d)(4)(B), however, the parties may object to the Order's inclusion of certain kinds of confidential information. Specifically, under Vaccine Rule 18(b), each party has fourteen days within which to request redaction "of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, the Ruling in its present form will be available. *Id.*

² The Vaccine Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755 (codified as amended at 42 U.S.C. §§ 300aa-10-34 (2012)) (hereinafter "Vaccine Act" or "the Act"). All subsequent references to sections of the Vaccine Act shall be to the pertinent subparagraph of 42 U.S.C. § 300aa.

Petitioner has now requested, pursuant to Vaccine Rule 18(b), that her name be redacted to initials in the caption and throughout the Decision. Motion, dated October 25, 2022 (ECF No. 50) (“Motion”) at 1. Respondent did not formally file a response to the Motion.

For the reasons stated below, I hereby grant Petitioner’s Motion.

ANALYSIS

Petitioner’s Motion to Redact discusses the standards to be applied in weighing redaction requests, based on two decisions addressing the matter at length. *See generally W.C. v. Sec’y of Health and Hum. Servs.*, 100 Fed. Cl. 440 (2011), *aff’d on other grounds*, 704 F.3d 1352 (Fed. Cir. 2013); *Langland v. Sec’y of Health & Hum. Servs.*, No. 07-36V, 2011 WL 802695 (Fed. Cl. Spec. Mstr. Feb. 3, 2011), *mot. for rev. den’d on non-relevant grounds*, 109 Fed. Cl. 421 (2013). I have in other decisions reviewed the Vaccine Act’s treatment of requests to redact Program decisions and rulings, as reflected in *W.C.* and *Langland*. *See generally K.L. v. Sec’y of Health & Hum. Servs.*, No. 12-312V, 2015 WL 11387761, at *2–4 (Fed. Cl. Spec. Mstr. Feb. 27, 2015), *mot. for review den’d*, 123 Fed. Cl. 497 (2015)³; Section 12(d)(4)(B); Vaccine Rule 18(b).

The Act provides for redaction from published decisions of certain categories of information—“medical files and similar files,”—but only if the disclosure of such information would constitute a “clearly unwarranted invasion of privacy.” Section 12(d)(4)(B). Although the Vaccine Rules make mandatory the redaction of a minor’s name, *adult* petitioners’ names are not similarly protected automatically. Names may, however, be reduced to initials if the movant establishes proper grounds for so doing. *See generally W.C.*, 100 Fed. Cl. at 460–61 (analogizing the Vaccine Act’s privacy concerns to treatment of similar issues under the Freedom of Information Act (“FOIA”), claimant’s name was properly subject to redaction from decision); *A.K. v. Sec’y of Health & Hum. Servs.*, No. 09-605V, 2013 WL 322918, at *2 (Fed. Cl. Spec. Mstr. Jan. 17, 2013); *but see Langland v. Sec’y of Health & Hum. Servs.*, No. 07-36V, 2011 WL 802695, at *7–8 (Fed. Cl. Spec. Mstr. Feb. 3, 2011), *mot. for rev. denied on non-relevant grounds*, 109 Fed. Cl. 421 (2013) (petitioners not entitled to redaction of names from decision where they failed to establish compelling grounds for so doing).

W.C. and *Langland* stand as two somewhat-opposed interpretations of how strict the standard for obtaining redaction should be. *Langland* adopts a more stringent approach, while *W.C.* emphasizes a balancing test that weighs a petitioner’s privacy interests against “the public purpose of the Vaccine Act.” *W.C.*, 100 Fed. Cl. at 460–61; *K.L.*, 2015 WL 11387761, at *2–3. In either

³ In *K.L.*, I initially denied the petitioner’s motion for redaction for failure to substantiate the request. *K.L.*, 2015 WL 11387761, at *4. The petitioner then filed a motion for review, which was denied. 123 Fed. Cl. at 509. Subsequently, I invited the petitioner to renew her motion for redaction and offer additional evidence to substantiate it. After providing additional support, I granted the petitioner’s motion. *K.L. v. Sec’y of Health & Human Servs.*, No. 12-312V, 2015 WL 11882259 (Fed. Cl. Spec. Mstr. Oct. 30, 2015).

case, however, a petitioner needs to make *some* showing to justify the relief of redaction; redaction is not available simply at a petitioner's beck and call. *W.C.*, 100 Fed. Cl. at 460 (balancing of interests favors redaction "where an objection [to disclosure] is made on *reasonable grounds*") (emphasis added). I have permitted redaction in cases where such a specialized showing was made, without reconciling these two competing standards or choosing one over the other. *See, e.g., K.L. v. Sec'y of Health & Human Servs.*, No. 12-312V, 2015 WL 11882259 (Fed. Cl. Spec. Mstr. Oct. 30, 2015) (granting Petitioner's motion for redaction because disclosure of her injuries would cause her harm in the employment context).

Here, I find it appropriate to grant the redaction proposed by Petitioner, because she has sufficiently justified the request. The relief Petitioner requests is minimal, seeking only that her name be redacted from the case captions and the Decision, to protect private information relating to her medical history. And Petitioner has made the minimal showing required, expressing the concern that disclosure of her name in connection with the allegations and facts addressed in the Decision might impact her work as a director of community engagement and education, and as a future concert violist. *See, e.g., K.L.*, 2015 WL 11882259, at *1. Because the degree of redaction is limited, and would not otherwise prevent the public from comprehension of the basis for my Decision, I conclude that Petitioner has made an adequate showing for her redaction request. Accordingly, I will redact Petitioner's name in the case caption and body of the Decision to her initials.

CONCLUSION

For the reasons set forth above, I hereby **GRANT** Petitioner's Motion. The Clerk of Court is hereby instructed to change the caption of this case to that set forth above. In addition, on or before November 18, 2022, Petitioner shall file a proposed redacted copy of the Decision, consistent with the terms of this Order, and it shall thereafter be submitted for the earlier-filed version.

IT IS SO ORDERED.

/s/ Brian H. Corcoran

Brian H. Corcoran

Chief Special Master